

RECEIVED
CENTRAL FAX CENTER

NOV 28 2006

Application No. 10/602,526

REMARKS*Status of Claims*

Claims 1-10 and 13-61 are pending, with claims 11 and 12 having been previously cancelled. Herein, claims 26 and 28 are cancelled without prejudice and claim 17 is amended, with support being in as-filed claim 28. Claims 27, 29-31, and 33-34 are amended to refer to a pending claim. New claim 62 is added with support in the Application at, e.g., page 9 line 2. Claims 17-25, 27, and 29-38 and new claim 62 are under examination.

Status of Withdrawn Claims

Claims 1-10, 13-16, and 39-61 have been withdrawn by the Examiner. Claims 33 and 35 are linking claims that link the inventions of Groups I, III, and IV. Applicant has elected Group IV having claims 17-38, and made a species election of item (h) polyethylene glycol.

Rejection of claims

Claims 17-38 were rejected under 35 U.S.C. §103(a) as being unpatentable over Tihon et al. (U.S. Pat. No. 5,499,994) and Gokeen (U.S. Pat. No. 6,913,744).

The amended claim language makes it clear that the claimed method involves, among other things, using the filler to increase a distance between the first tissue location and the second tissue location so that the presence of the filler causes the first tissue location to thereby receive less of a dose of radioactivity that is applied. The claim was further amended to specify that the filler is removed by biodegradation of the filler in the patient.

Tihon et al. and Gokeen do not disclose among other things, using the filler to increase a distance between the first tissue location and the second tissue location so that the presence of the filler causes the first tissue location to thereby receive less of a dose of radioactivity that is

Application No. 10/602,526

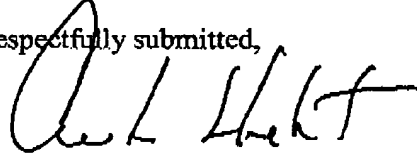
applied. Instead, Tihon et al. teaches dilating a urethra with a swellable material without reference to radiation dosages and Gokeen teaches delivery of specific agents, e.g., collagenase, without reference to how tissue displacement with a filler can be useful in the context of radiation treatment. Accordingly, Tihon et al. and Gokeen do not teach or suggest what is claimed and the artisan reading Tihon et al. and Gokeen would not have any inclination to practice what is claimed.

Moreover, what is claimed is a biocompatible, biodegradable filler wherein the filler is removed by biodegradation of the filler in the patient. Tihon et al. and Gokeen do not teach or suggest this feature in combination with the other claimed features.

Respectfully, the basis for rejecting dependent claims 18-20 and 24 is unclear. A detailed examination of claims 18-20 and 24 and each of the pending claims presently under examination is respectfully requested, with a reasoned basis for the rejection of each claim being carefully placed into the record. A complete examination will facilitate prosecution for the Patent Office and the Applicant, and the Examiner is requested to avoid piecemeal examination as much as possible, as per MPEP 707.07(g).

Accordingly, allowance of the claims is requested. The Examiner is invited to telephone the undersigned if the Examiner believes it would be useful to advance prosecution.

Respectfully submitted,



Curtis B. Herbert, Ph.D.
Registration No. 45,443

Customer No. 62274
Dardi & Associates, PLLC
US Bank Plaza, Suite 2000
220 South 6th Street
Minneapolis, Minnesota 55402
Telephone: (612) 605-1038